

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2350 - SB 2763

March 3, 2022

SUMMARY OF BILL: Abolishes recusal motions in all courts. Adds provisions governing the conduct of courts and the process for appeals, specifically, appeals when there is the appearance of undermined neutrality.

Establishes that an adjudicator is not qualified to adjudicate a case, if there is an appearance of undermined neutrality. Provides process for adjudicators to determine if there is cause to withdraw from adjudicating an assigned case based on if an appearance of undermined neutrality might occur.

Authorizes a litigator to file a request to review an adjudicator's decision to not withdraw. Requires the Administrative Office of the Courts (AOC) to appoint a panel of five former members of the General Assembly, who are not lawyers or adjudicators, to review the decision within five business days after a litigator files a request for review. Requires the AOC to assemble a meeting, which may be held electronically, of the members of the panel, if any member of the panel reports that the member needs additional information to assess the reliability of the adjudicator's neutrality affirmation and the reliability of the litigant's request for review.

Requires, after July 1, 2022, all opinions and holdings of the court of appeals and the court of criminal appeals be published in the official reporter of Tennessee cases, and thereby, be considered binding precedent.

Requires trial and appellate courts to identify and prepare a memorandum when a case is a case of first impression. Requires the clerks of all courts, when a case is initiated by their respective court, to file an order requiring the initiating person to engage in formal mediation. Prohibits the issuance of any other order in the case until there has been mediation. Establishes requirements for the initial assignment of adjudicators by the trial court.

FISCAL IMPACT:

Increase State Expenditures –

\$29,194,300/FY22-23/General Fund

\$26,980,300/FY23-24 and Subsequent Years/General Fund

\$688,000/FY22-23 and Subsequent Years/Indigent Representation Fund

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Assumptions:

Judicial Costs

- According to the AOC Annual Statistical Report for 2020-2021, there were a total of 254,128 trial court filings in FY20-21.
- According to the Comptroller of the Treasury's (COT) 2018-2019 Tennessee Judicial Weighted Caseload study, Tennessee had a deficit of 8.53 full-time judges statewide.
- The proposed legislation is reasonably assumed to result in a weighted caseload of 11 minutes, or an additional 2,795,408 minutes (11 minutes x 254,128 cases) for a judge to review each case and determine if there is an appearance of undermined neutrality, and then take any additional steps as necessary.
- It is assumed a litigant will file a request for review in approximately 25 percent or 63,532 cases (254,128 x 25.0%).
- It is reasonably assumed the process of review by a panel and any requested meetings as required by the proposed language will result in a weighted caseload of 58 minutes, or 3,684,856 minutes (58 minutes x 63,532 cases).
- The total additional minutes of work for trial court judges is estimated to be 6,480,264 (2,795,408 case review minutes + 3,684,856 panel review minutes).
- According to the COT Tennessee Trial Courts Judicial Weighted Caseload study in 2013, the average number of minutes a judge is available for case-related work is 79,044 minutes per year.
- Based on information provided by the AOC, the proposed legislation cannot be accommodated within existing resources.
- An additional 81.98 judges (6,480,264 minutes / 79,044) will be required to handle the additional work.
- The salary and benefits for each judge or chancellor position are estimated to be \$237,196 (\$194,800 salary + \$42,396 benefits).
- Additionally, each of these positions will require recurring funding for supplies, legal subscriptions, rent, etc. estimated to be \$24,700 per position.
- Pursuant to Tenn. Code Ann. 16-2-505(c), upon the election of a judicial district judge, a secretary position is created for that judge. This analysis assumes the secretary will be hired upon the appointment of the judge by the Governor.
- The salary and benefits for each secretary position is estimated to be \$60,100 (\$45,600 + \$14,500 benefits).
- Additionally, each position will require recurring funding for travel estimated to be \$4,100 per position.
- The one-time increase in state expenditures in FY22-23 associated with each of the 82 created judge positions is \$27,000 (\$17,000 furniture and office set up + \$10,000 for computer and online software).
- The total increase in state expenditures associated with the additional judge positions is estimated to be \$28,953,872 [(\$237,196 + \$24,700 + \$60,100 + \$4,100 + \$27,000) x 82 positions] in FY22-23 and \$26,739,872 [(\$237,196 + \$24,700 + \$60,100 + \$4,100) x 82 positions] in FY23-24 and subsequent years.

Indigent Representation Fund

- The appointed public defender or private counsel or an indigent defendant is entitled to represent a defendant in a motion for recusal.
- According to the AOC Annual Statistical Report for 2020-2021, there were a total of 142,335 criminal court filings statewide in FY20-21. This does not include General Sessions Courts.
- It is assumed a litigant will file a request for review in approximately 25 percent or 35,584 cases ($142,335 \times 25.0\%$).
- Of those 35,584, it is assumed that a public defender will represent 60 percent of cases and an appointed private counsel will represent 40 percent, or 14,234 cases ($35,584 \times 40.0\%$).
- It is reasonably assumed appointed counsel will spend 58 minutes on such a review and meeting, resulting in 825,572 minutes ($14,234 \times 58$) or 13,759 additional hours of work ($825,572 / 60$).
- Per Supreme Court Rule 13, appointed counsel is entitled to \$50/hour for work.
- The total increase in expenditures to the Indigent Representation Fund is estimated to be \$687,950 ($13,759 \text{ hours} \times \$50/\text{hour}$) in FY22-23 and subsequent years.

AOC Staff Costs

- Based on information provided by the AOC, the proposed legislation cannot be accommodated within existing resources.
- The AOC will require four additional administrative positions to assist with the estimated 63,532 review panel cases, meetings, and all associated documents.
- The total increase in state expenditures associated with the additional positions is estimated to be \$240,400 [$(\$45,600 \text{ salary} + \$14,500 \text{ benefits}) \times 4 \text{ positions}$] in FY22-23 and subsequent years.

Total Impact

- The total increase in state expenditures is estimated to be \$29,194,272 ($\$28,953,872 \text{ judge positions} + \$240,400 \text{ AOC positions}$) in FY22-23 and \$26,980,272 ($\$26,739,872 \text{ judge positions} + \$240,400 \text{ AOC positions}$) in FY23-24 and subsequent years.
- The total recurring increase to the Indigent Representation Fund is estimated to be \$687,950 in FY22-23 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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